From: Vip Malixi
To: Microsoft ATR
Date: 12/10/01 5:35am
Subject: settlement will kill open-source competitors of Microsoft

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He's Not in It for the Profit
Steve Satchell for Microsoft Anti-Trust Compliance
Committee!

By Robert X. Cringely

Two calls came in on the same subject in the same day
this week, but from very different perspectives. The
first call was from a lawyer working for the
California Attorney General. He was looking for
somebody like me to testify in the remedy phase of the
Microsoft anti-trust case. California, as you know, is
one of nine states that have chosen not to go along
with the proposed anti-trust settlement between
Microsoft and the U.S. Department of Justice. The nine
states think Microsoft is getting off too easily. The
second call came from Steve Satchell, an old friend
from my InfoWorld days, who had noticed deep in the
text of the proposed Microsoft/DoJ settlement that as
part of the deal, there will be a three-member
committee stationed at Microsoft to make sure the deal
is enforced. Satch wants one of those jobs.

I think he should get the position. With a background
in computer hardware and software that dates back to
one of the very first nodes on the Arpanet 30 years
ago, Steve Satchell knows the technology. He has
worked for several big computer companies, and even
designed and built his own operating systems. And from
his hundreds of published computer product reviews, he
knows the commercial side of the industry. He is glib
and confident, too, which might come in handy while
attempting to keep Microsoft honest. Sometimes there
is a distinct advantage to being the first to apply
for a job, so I think Satch should be a shoo-in for
one of those compliance gigs. And the boy looks mighty
fine in a uniform.

The job will be a challenge, that's for sure. The
committee has the responsibility of settling small
disputes and gathering the information needed to
prosecute big ones. They are supposed to have access
to ALL Microsoft source code, and their powers are
sweeping. If it goes through, I only hope the court
picks three tough but fair folks like Satch.

Meanwhile, there is still plenty to complain about in
the text of the proposed settlement, itself.

Those who followed the case closely will remember that
one of Microsoft's chief claims during the trial was
that times and the nature of business have changed,
and that anti-trust enforcement ought to be different
today than it was when the laws were first passed in
the early part of the last century. This is a
fast-moving industry based on intellectual, rather
than industrial, capital, goes the argument. Sure,
Microsoft is on top today (and every day since it got
bigger than Lotus around 1986) but, hey, that could
change in a Redmond minute. This argument evidently
didn't resonate with the court, though, since
Microsoft was found guilty. Keep repeating to
yourself: "Microsoft is guilty."

Well, Microsoft now appears to be exacting its
revenge, leaning this time on the same letter of the
old law to not only get a better deal, but literally

to disenfranchise many of the people and organizations who feel they have been damaged by Microsoft's actions. If this deal goes through as it is written, Microsoft will emerge from the case not just unscathed, but stronger than before.

Here is what I mean. The remedies in the Proposed Final Judgement specifically protect companies in commerce -- organizations in business for profit. On the surface, that makes sense because Microsoft was found guilty of monopolistic activities against "competing" commercial software vendors like Netscape, and other commercial vendors -- computer vendors like Compaq, for example. The Department of Justice is used to working in this kind of economic world, and has done a fair job of crafting a remedy that will rein in Microsoft without causing undue harm to the rest of the commercial portion of the industry. But Microsoft's greatest single threat on the operating system front comes from Linux -- a non-commercial product -- and it faces a growing threat on the applications front from Open Source and freeware applications.

The biggest competitor to Microsoft Internet Information Server is Apache, which comes from the Apache Foundation, a not-for-profit. Apache practically rules the Net, along with Sendmail, and Perl, both of which also come from non-profits. Yet not-for-profit organizations have no rights at all under the proposed settlement. It is as though they don't even exist.

Section III(J)(2) contains some very strong language against not-for-profits. Specifically, the language says that it need not describe nor license API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business: "...(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..."

So much for SAMBA and other Open Source projects that use Microsoft calls. The settlement gives Microsoft the right to effectively kill these products.

Section III(D) takes this disturbing trend even further. It deals with disclosure of information regarding the APIs for incorporating non-Microsoft "middleware." In this section, Microsoft discloses to Independent Software Vendors (ISVs), Independent Hardware Vendors (IHVs), Internet Access Providers (IAPs), Internet Content Providers (ICPs), and Original Equipment Manufacturers (OEMs) the information needed to inter-operate with Windows at this level. Yet, when we look in the footnotes at the legal definitions for these outfits, we find the definitions specify commercial concerns only.

But wait, there's more! Under this deal, the government is shut out, too. NASA, the national laboratories, the military, the National Institute of Standards and Technology -- even the Department of Justice itself -- have no rights. It is a good thing Afghanistan is such a low-tech adversary and that B-52s don't run Windows.

I know, I know. The government buys commercial
software and uses contractors who make profits. Open
Source software is sold for profit by outfits like Red
Hat. It is easy to argue that I am being a bit shrill
here. But I know the way Microsoft thinks. They
probably saw this one coming months ago and have been
falling all over themselves hoping to get it through.
If this language gets through, MICROSOFT WILL FIND A
WAY TO TAKE ADVANTAGE OF IT.

Is the Department of Justice really that stupid? Yes
and no. They showed through the case little
understanding of how the software business really
functions. But they are also complying with the law
which, as Microsoft argued, may not be quite in sync
with the market realities of today. In the days of
Roosevelt and Taft, when these laws were first being
enforced, the idea that truly free products could
become a major force in any industry -- well, it just
would have seemed insane.

This is far from over, though. The nine states are
still in the fight and you can be, too, by exercising
your right under the Tunney Act to comment on the
proposed settlement. The Tunney Act procedures require
the United States to:

1. File a proposed Final Judgment and a Competitive
Impact Statement (CIS) with the court.

2. Publish the proposed Final Judgment and CIS in the
Federal Register.

3. Publish notice of the proposed Final Judgment in
selected newspapers.

4. Accept comments from the public for a period of 60
days after the proposed Final Judgment is published in
the Federal Register.

5. Publish the comments received, along with responses
to them, in the Federal Register.

6. File the comments received and responses to them
with the court.

To make your views known (and to put in a good word
for Steve Satchell), there are several options:

E-mail: microsoft.atr@usdoj.gov
In the Subject line of the e-mail, type "Microsoft
Settlement."

Fax: 1-202-307-1454 or 1-202-616-9937

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